individual to undertake muscovy duck control if we find that agency or individual has undertaken actions that may harm federally listed threatened or endangered species or are contrary to the provisions of this part.

Dated: August 8, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–19550 Filed 8–21–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2007–0018; 91200–1231–9BPP]

RIN 1018–AV33

Migratory Bird Permits; Control of Purple Swamphens

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing control of depredating or introduced migratory birds. The purple swamphen (*Porphyrio porphyrio*) is not native to any State, and competes with native species. However, we have proposed to add it to the list of species protected under our Migratory Bird Treaty Act obligations because it does occur naturally in American Samoa. We propose to amend 50 CFR part 21 to allow removal of purple swamphens in the contiguous United States, Hawaii, Alaska, Puerto Rico, and the U.S. Virgin Islands.

DATES: We must receive all comments on this proposal by October 21, 2008.

ADDRESSES: You may submit comments, identified as comments on RIN 1018–AV33, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. Mail or hand delivery:* Public comments Processing, Attention RIN 1018–AV33; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia).

We implement the MBTA through regulations found in title 50 of the Code of Federal Regulations (CFR). In 50 CFR 10.13, we list all species of migratory birds protected by the MBTA that are subject to the regulations protecting migratory birds in title 50, subchapter B (Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants). In 50 CFR part 13 (General Permit Procedures) and part 21 (Migratory Bird Permits), regulations allow us to issue permits for certain activities otherwise prohibited in regard to migratory birds. In part 21, we issue permits for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding and marking of migratory birds. We also provide certain exceptions to permit requirements for public, scientific, or educational institutions, and establish depredation and control orders that provide limited exceptions to the MBTA.

Purple Swamphen

The purple swamphen, a chicken-sized bird in the family Rallidae, is native to the Old World, and in the United States and its territories is native only in American Samoa. Because of the species' occurrence in American Samoa, it is protected under the Migratory Bird Treaty Act. We included this species in the proposed rule (71 FR 50194, August 24, 2006) to revise the list of migratory birds found in 50 CFR 10.13. In the United States, the purple swamphen occurs naturally only in the Pacific Island territories of American Samoa, Baker and Howland Islands, Guam, and the Northern Marianas Islands (Pratt et al. 1987). We proposed to add the species to the list because it is in a group of species that belong to families protected under treaties with Canada and Mexico. We anticipate that we will add the species to the list when we finalize the regulation. However, we will not make a final decision on the proposed § 10.13 list before we make a final decision on this purple swamphen proposed rule.

The purple swamphen was introduced in southern Florida through escapes from aviculturalists and from the Miami Metro Zoo in the early 1990s. In Florida, the purple swamphen competes with native species and may impact the plant life of wetlands. The purple swamphen has an international reputation for eating eggs and chicks, including ducklings, of other ground or near-ground nesting species. As far as we know, counties in the southern half of Florida are the only place in the contiguous United States, Hawaii, Alaska, Puerto Rico, or the U.S. Virgin Islands where the purple swamphen occurs.

We propose to allow removal of introduced purple swamphens in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands from any location where they are found. This removal is in keeping with our other actions to reduce the spread of introduced species that compete with native species or harm habitats that they use. It also is in keeping with the intent of the Migratory Bird Treaty Reform Act of 2004 (16 U.S.C. 703(b)).

Public Participation

We seek comments on any aspect of this proposed rule. You may submit your comments by either of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or by fax, or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last names, city, state, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public view. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documents will be available for public inspection, by appointment, during normal business

hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

When submitting written comments, please include your name and return address in your letter and identify it as comments on proposed regulations change RIN 1018–AV33. To facilitate compiling the administrative record for this action, you must submit written comments on 8½-inch-by-11-inch paper.

Required Determinations

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections?) (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example: *''§ 21.12 General exceptions to permit requirements.''* (5) Does the description of the rule in the ''Supplementary Information'' section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240–0001. You also may e-mail comments to *Exsec@ios.doi.gov.*

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government,

(b) Whether the rule will create inconsistencies with other Federal agencies' actions,

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients, and

(d) Whether the rule raises novel legal or policy issues.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this proposed rule would not be a significant regulatory action. The Office of Management and Budget makes the final determination of significance under E.O. 12866.

a. This proposed rule would not raise novel legal or policy issues. The proposed provisions are in compliance with other laws, policies, and regulations.

b. This proposed rule would not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There would be no costs associated with this proposed rule.

c. This proposed rule would not create inconsistencies with other agencies' actions. The rule deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

d. This proposed rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of control of purple swamphens.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act, and we have determined that this action would not have a significant economic impact on a substantial number of small entities because the changes we are proposing are intended to allow removal of an introduced species that competes with native species of wildlife. Purple swamphens are not found in business areas, and we foresee no effects of this proposed rule on small businesses.

There would be no costs associated with this regulations change. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

a. This proposed rule would not have an annual effect on the economy of $100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This proposed rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of $100 million or greater in any year. It would not be a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule would not have significant takings implications. A takings implication assessment is not required. This proposed rule would not

contain a provision for taking of private property.

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It would not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from control of purple swamphens.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. There are no information collection requirements associated with this regulations change.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f) and part 516 of the U.S. Department of the Interior Manual (516 DM). The change we propose is to allow people to remove a species from locations in the United States and its territories in which the species may have been introduced. The environmental impacts of control of the purple swamphen have already been addressed. The State of Florida prepared a purple swamphen control plan and a NEPA assessment of State control actions. We completed an Environmental Action Statement in which we concluded that the proposed regulations change allowing the removal of an introduced species requires no additional assessment of potential environmental impacts.

Socioeconomic. We do not expect the proposed action to have discernible socioeconomic impacts.

Migratory bird populations. This proposed rule would not alter the take of native migratory birds from the wild. It would not harm native migratory bird populations.

Endangered and Threatened Species. The purple swamphen is not threatened or endangered, and the proposed regulations change would not affect threatened or endangered species or habitats important to them.

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). We have concluded that the proposed regulations change would not affect listed species, and the Division of Migratory Bird Management has completed an Endangered Species consultation on this proposed rule confirming this conclusion.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This proposed rule would not interfere with the Tribes' ability to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 addressing regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule only affects control of invasive purple swamphens at limited locations, it would not be a significant regulatory action under Executive Order 12866, nor would it significantly affect energy supplies, distribution, or use. This action would not be a significant energy action, and no Statement of Energy Effects is required.

References

Pratt, H. D., P. L. Bruner, and D. G. Berrett. 1987. *The Birds of Hawaii and the Tropical Pacific.* Princeton University Press, Princeton, New Jersey.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

2. Add new § 21.53 to read as follows:

21.53 Control order for purple swamphens in the contiguous United States.

(a) *Control of purple swamphens.* Federal, State, Tribal, and local wildlife management agencies, and their tenants, employees, or agents may remove or destroy purple swamphens (*Porphyrio porphyrio*) or their nests or eggs at any time when they find them anywhere in the contiguous United States, Hawaii, Alaska, Puerto Rico, or the U.S. Virgin Islands. Any authorized agency personnel may temporarily possess, transport, and dispose of purple swamphens, subject to the restrictions in paragraph (c) of this section. No permit is necessary to do so.

(b) *Disposal of purple swamphens.* Authorized persons may donate purple swamphens taken under this order to public museums or public institutions for scientific or educational purposes, or they may dispose of the carcasses by burial or incineration. No one may retain for personal use, offer for sale, or sell a purple swamphen removed under this section.

(c) *Other provisions.* (1) Authorized persons may not remove or destroy purple swamphens or their nests or eggs if doing so is contrary to any State, Territorial, Tribal, or local laws or regulations.

(2) Authorized persons may not remove or destroy purple swamphens or their nests or eggs if doing so will adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act. In particular, the purple swamphen resembles the native purple gallinule (*Porphyrula martinica*). Authorized persons must take special care not to take purple gallinules or their nests or eggs when conducting purple swamphen control activities. Certain persons may take purple gallinules without a permit on rice-producing property in Louisiana according to the terms of a separate depredation order (see § 21.45).

(3) If, while operating under this regulation, an authorized person takes

any other species protected under the Endangered Species Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act, that person must immediately report the take to the nearest Ecological Services office of the Fish and Wildlife Service. See *http://www.fws.gov/where/* to find the location of the nearest Ecological Services office.

(4) We may suspend or revoke the authority of any agency or individual to undertake purple swamphen control if we find that agency or individual has, without an applicable permit, taken actions that may take Federally listed threatened or endangered species or any bird species protected by the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act (see § 10.13 of subchapter A of this chapter for the list of protected migratory bird species).

Dated: August 8, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–19552 Filed 8–21–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080407531–8569–01]

RIN 0648–AW68

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to amend the Bottlenose Dolphin Take Reduction Plan's (BDTRP) implementing regulations by extending, for an additional three years, fishing restrictions expiring on May 26, 2009. This action will continue, without modification, current nighttime fishing restrictions of medium mesh gillnets operating in the North Carolina portion of the Winter-Mixed Management Unit during the winter. Members of the Bottlenose Dolphin Take Reduction Team (BDTRT) recommended these regulations be extended for an additional three years to ensure continued conservation of the Western North Atlantic coastal bottlenose dolphin stock, should a directed spiny dogfish fishery reemerge in North Carolina.

DATES: Written comments on the proposed rule must be received no later than 5 p.m. eastern time on September 22, 2008.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) 0648–AW68, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Facsimile (fax): 727 824–5309, Attn: Assistant Regional Administrator, Protected Resources.
- Mail: Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The BDTRP, Environmental Assessment, BDTRT meeting summaries, and background documents can be downloaded from the Take Reduction Plan web site at: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm*

FOR FURTHER INFORMATION CONTACT: Stacey Carlson, NMFS, Southeast Region, 727–824–5312, *Stacey.Carlson@noaa.gov*; or Melissa Andersen, NMFS, Protected Resources, 301–713–2322, *Melissa.Andersen@noaa.gov*. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

BDTRP and Medium Mesh Gillnet Restrictions

Section 118(f)(1) of the Marine Mammal Protection Act (MMPA) requires NMFS to develop and implement take reduction plans to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries. The MMPA defines a strategic stock as a marine mammal stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA or as a depleted species under the MMPA (16 U.S.C. 1362(2)). PBR is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Category I or II fisheries are fisheries that have frequent or occasional incidental mortality and serious injury of marine mammals, respectively.

As specified in the MMPA, the short-term goal of a take reduction plan is to reduce, within six months of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels less than PBR for the stock. The long-term goal of a plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The MMPA also requires NMFS to amend take reduction plans and implementing regulations as necessary to meet the requirements of this section.

On April 26, 2006, NMFS published a final rule (71 FR 24776) implementing the BDTRP, with a May 26, 2006, effective date. The BDTRP contains both regulatory and non-regulatory management measures to reduce serious injury and mortality of the Western North Atlantic coastal bottlenose dolphin stock (dolphin) (*Tursiops truncatus*), a strategic stock, in nine Category I and II commercial fisheries operating within the dolphin's distributional range. The Western North Atlantic coastal bottlenose dolphin stock is split into seven spatial and temporal management units because of its biological complexity, and management measures in the BDTRP are applied by management unit. Both the regulatory and non-regulatory